

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

Christopher Prosser,

Plaintiff,

v.

USHEALTH Advisors, LLC;  
Patrick Carr;  
Troy A. McQuagge;  
James White;  
John and Jane Does 1 through 50;  
UnitedHealth Group, Inc.;  
Andrew Witty;  
Dirk McMahon; and  
Brian Thompson,

Defendants.

Case No. 4:23-cv-00124-MTS

**DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S FIRST AMENDED  
COMPLAINT**

COMES NOW Defendants USHEALTH Advisors, LLC, Patrick Carr, Troy A. McQuagge, James White, UnitedHealth Group, Inc., Andrew Witty, Dirk McMahon, and Brian Thompson, by and through their undersigned counsel, and submits this Motion to Dismiss pursuant to Rules 12(b)(2) and 12(b)(6) of the Federal Rules of Civil Procedure. As explained in the accompanying Memorandum:

1. Plaintiff has not made any showing of personal jurisdiction over Patrick Carr, Troy A. McQuagge, James White, UnitedHealth Group, Inc., Andrew Witty, Dirk McMahon, or Brian Thompson. These Defendants are not at home in the Eastern District of Missouri. And the

Amended Complaint lacks any well-pleaded factual allegations connecting any of these Defendants to the calls at issue. As a result, there is no basis to exercise personal jurisdiction over any of these Defendants.

2. To the extent the Court has jurisdiction over any of the Defendants, the Amended Complaint should still be dismissed because it fails to state any viable claim against any Defendant, including USHEALTH Advisors, LLC. In general, the Amended Complaint is a shotgun pleading, repeatedly asserting the same conclusory allegations against all of the Defendants at once, and ultimately failing to establish direct or vicarious liability against any of them. As to the specific claims, Plaintiff fails to state a claim under the TCPA because he invited the calls at issue, and because he does not plausibly allege that he was contacted via an ATDS or by an artificial or prerecorded voice. His inviting the calls dooms his attempt to state a claim under the TCPA's or Missouri law's do-not-call provisions. And Plaintiff cannot state a claim under the Missouri Merchandising Practices Act because he has not alleged that he purchased or leased anything from any of the Defendants.

Plaintiff has not met his burden to establish personal jurisdiction over Patrick Carr, Troy A. McQuagge, James White, UnitedHealth Group, Inc., Andrew Witty, Dirk McMahon, or Brian Thompson. And he has failed to state a claim against any of the Defendants. Accordingly, the Amended Complaint should be dismissed in its entirety.

Dated: June 15, 2023

Respectfully submitted,

/s/ Robert P. Berry

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*Attorneys for Defendants*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on June 15, 2023, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which caused a copy of the same to be sent via email to all counsel of record with notice of case activity generated.

/s/ Robert P. Berry